

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Jesse Lee Childs,

Petitioner,

VS.

Wayne C. McCabe, Warden,

Respondent.

Civil Action No.: 1:11-cv-873-RMG

ORDER

This is a *pro se* action brought by Petitioner pursuant to 28 U.S.C. § 2254. In accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2), DSC, this matter was referred to United States Magistrate Judge Shiva Hodges for pre-trial proceedings and a Report and Recommendation. On August 10, 2011, Respondent filed a motion for summary judgment and memorandum in support. (Dkt. Nos. 22 and 23). Petitioner requested and received two extensions of time to respond to Respondent's motion for summary judgment. (Dkt. Nos. 30, 31, 34, 35). After the most recent extension of time granted by the Magistrate, Petitioner's deadline to respond to Respondent's motion for summary judgment was November 4, 2011. (Dkt. No. 34). On November 7, 2011, the Magistrate issued a Report and Recommendation recommending that Petitioner's action be dismissed with prejudice for failure to prosecute. (Dkt. No. 41). Also on November 7, 2011, the Clerk's office received another motion for extension of time from Petitioner. (Dkt. No. 44). In Petitioner's motion, which was dated November 1, 2011 but not received by the Clerk's office until November 7, 2011, Petitioner requests an additional thirty days to respond to Respondent's motion for summary judgment. (*Id.*). For the reasons stated

herein, the Court rejects the recommendation of Magistrate Judge Hodges at this time and recommits this matter to Magistrate Judge Hodges.

LAW/ANALYSIS

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility for making a final determination remains with this Court. *Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). This Court is charged with making a *de novo* determination of those portions of the Report and Recommendation to which specific objection is made. Additionally, the Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate.” 28 U.S.C. § 636(b)(1). This Court may also “receive further evidence or recommit the matter to the magistrate with instructions.” *Id.* In the absence of specific objections to the Report and Recommendation, this Court is not required to give any explanation for adopting the recommendation. *Camby v. Davis*, 718 F.2d 198, 200 (4th Cir. 1983).

Here, it appears that Petitioner’s motion for an extension of time and Magistrate Judge Hodges’ Report and Recommendation, both of which were filed on November 7, 2011, crossed in the mail. In order to give Magistrate Judge Hodges the opportunity to rule on Petitioner’s motion for an extension of time, the Court recommits this matter to Magistrate Judge Hodges pursuant to its authority under 28 U.S.C. § 636(b)(1).

AND IT IS SO ORDERED.



Richard Mark Gergel
United States District Court Judge

November 9, 2011
Charleston, South Carolina